

COMMENTARY

THE GREAT CIVIL RIGHTS DEBATE

The Ghost of Thaddeus Stevens in the Senate Chamber

C. VANN WOODWARD

IT IS time to march forward," announced Senator Wayne Morse of Oregon, "toward the goal of social, economic, and political equality for all Americans, irrespective of the color of their skins." But the Senator hastily followed up this bugle call for advance with a roll of drums for retreat: "However, this forward movement must be orderly, constitutionally lawful, devoid of carpetbagging and strong-armed tactics. It must be based upon appeals to reason and the instinctive sense of all patriotic Americans to fair play and moral justice."

Between demand for justice and fear of injustice, between yearning for progress and respect for tradition, the fate of the first civil rights act since 1875 hung suspended through the summer of 1957. Morse's conflicting impulses were borne out in his conduct, his marching and counter-marching, first with right-wing Southerners and then

WHEN the President put his signature last month to the first Civil Rights Act since 1875, another step in what C. VANN WOODWARD calls the Second Reconstruction was completed. Mr. Woodward, professor of history at Johns Hopkins, is a leading authority on the First Reconstruction, the author of *Reunion and Reaction* and *The Strange Career of Jim Crow*. Readers will recall his article in our June 1956 issue, "The 'New Reconstruction' in the South."

with left-wing Northerners. So much so that one of his friends wondered "if he hasn't jumped the rails." Actually, his claim to consistency was stronger than that of others. The most conspicuous, though hardly the most surprising, waverer was President Eisenhower. But liberal weeklies, conservative dailies, labor unions, and civil liberties groups, including the NAACP, shifted ground, hesitated, compromised.

It was a great national debate, not merely a Congressional debate, and even Senators were visibly trying to make up their minds. They felt and phrased their dilemmas differently. Senator Joseph Clark of Pennsylvania, whose mother came from Louisiana, saw it as "an 18th-century aristocratic way versus a 20th-century democratic way." Senator Leverett Saltonstall of Massachusetts looked upon it as "two fundamental concepts of Government—the rights of the individual versus the principle of keeping the Government close to the people." Others regarded the issue as lying between the authority of the Federal courts and the integrity of the states, the ancient dilemma of the federal system. Few were willing wholly to deny the sincerity of their adversary or the merit of his argument. All thought that moral issues were at stake, but few went so far as to claim that right was entirely on one side.

There were moments, however, that recalled the 1850's or the 1860's, flashbacks to the hard intransigent sectionalism of North versus South. When that occurred the debate took on the classic pattern of morals against mores, the unyielding clash of "right" against "rights," the parry and thrust of the moralistic against the legalistic argument. In their struggles the adversaries often stumbled back and forth over statutes and attitudes that had been buried since the days of the First Reconstruction and found themselves using the words and striking the poses of their grandfathers. Some recoiled in embarrassment. A few rejoiced in the role. The majority were happily unaware of the analogy.

I

COMPARED with the executive and judiciary branches, the legislative has been the laggard in the Second Reconstruction.* The current development has been a curious reversal of its prototype of the 1860's. In those days it was Congress that seized the initiative, pressed the most advanced reforms, and furnished the most radical leadership. The executive on the other hand wrote vetoes, took dilatory measures, and pleaded for caution; while the judiciary stood off constitutional revision and reform with subtle and ingenious opinions that nullified legislative radicalism. In the present instance, of course, the reverse has been true. The Supreme Court has been the avant-garde of reform, reversing precedent, challenging the old ways, demanding change. The Presidents have run a close second, with their Committee on Fair Employment Practices, their Committee on Civil Rights, and their executive orders desegregating government departments and the armed services without so much as consulting Congress. These important decisions were privately made by nine men or by a handful of cabinet members with no reference to popular will. Not until Congress reached a major decision would popular opinion be fully aroused and expressed.

Throughout the first decade and a half

of the Second Reconstruction, Congress often debated and held hearings, but it did not act. It considered fair employment bills, anti-poll tax bills, anti-lynching bills, and civil rights bills only to postpone or defeat them. Over the years, however, the tide of demand for legislative action mounted. In the 76th Congress, the one preceding Pearl Harbor, only fourteen bills to advance minority rights were introduced, but in the 77th thirty-five such bills came forth. This level was maintained during the war years and the Congress that followed, but the 80th Congress received fifty-one bills of the kind, the 81st was swamped with seventy-two, and the tide continued to rise. The storm over the Second Reconstruction reached what was probably its climax with the Court decisions of 1954 and 1955, and still the Congressional dam held fast. Bill after bill, with tremendous pressure behind them, died in committee or were talked to death.

The trouble was not in the House of Representatives, which frequently yielded to the pressure, but in that formidable Institution with a will and way of its own, the United States Senate. The Senate has been called "a Southerner institution," and surely the remarkable prestige that elderly Southern members enjoy within it and the power of the Southern chairmen of seven of the nine important Senate committees would go far to justify the reputation. Using the Senate rules protecting unlimited debate, the Southern Democrats relied upon their tacit coalition with conservative Northern Republicans for sufficient votes to prevent cloture and enable them to threaten to filibuster any civil rights bill to death. The coalition has been used since about 1938 to block economic legislation offensive to conservative Republicans as well as civil rights laws unwelcome to Southern Democrats. But the same type of inter-party, inter-regional coalition has a history that dates back to the end of the First Reconstruction, when it was employed to complete the frustration of that experiment.

The coalition split over the recent administration bill for civil rights. A bill with a curious history, it had its start in April 1956 when Attorney General Brownell proposed a mild measure for the establishment of a bipartisan Commission on Equal Rights and a Civil Rights Division in the Department of Justice. He recommended that once the Commission were established it make a study of legislation to prohibit anyone from interfering with the right to vote, and to enable the Attorney General to move against offenders by civil proceedings for injunction in Federal courts and thus to bypass state and administrative remedies as well as jury trial. He also recommended that the Commission study legislation to authorize the Attorney General to proceed in the same manner against anyone who violated "certain rights" unspecified save by the number of a statute. A "study" is one thing, legislation quite another. The following February, however, Mr. Brownell informed Congress that the administration wanted immediate legislation not only for the Commission and the new Division of Civil Rights, but for the whole subject that the proposed Commission was to study. Between this and the original mild proposal there had intervened a Congressional election that resulted in continued Democratic control of Congress in spite of the strong appeal of the President for Republican majorities. According to Arthur Krock, "Analyses of the causes [of Democratic victory] persuaded the Republican high command that the party needed an aggressive position on an issue popular in this country at large to defeat the Democrats in 1958 and 1960. A drive for immediate equal-rights legislation was an obvious choice, the Democrats being split on the issue."

Whether that was the explanation or not, the elaborate administration bill was pushed hurriedly through the House in June with only token debate and a huge majority of 282 to 126, representing a combination of Republicans and liberal Democrats. The next hurdle, however, seemed insuperable.

This was the Senate Judiciary Committee, to which the House bill would normally go for study. The chairman was Senator James Eastland of Mississippi, who boasted that he had the bill sewed into his pocket. Then the profoundly traditional, rule-conscious Senate committed an untraditional act. It suspended its rule, bypassed the Judiciary Committee, and placed the House bill on the Senate calendar. The outer buttresses of the great dam had crumbled. For the first time since 1875 an elaborate civil rights bill was before the Senate and a full-dress debate and a division were apparently inevitable.

THERE still remained the filibuster as a last resort. It was almost universally expected. And despite the rumbling talk of Rule XXII and cloture and fighting it out if it took all winter, a determined filibuster could probably have frustrated the majority will for the rest of the session. But what was the cost? The cost was the disruption of the Democratic party, and there were realistic Democrats, Southern and Northern, who knew it. In fact, either of two possibilities could spell ruin: either the victory of the majority or the victory of the Southern minority, either the adoption of the administration bill or its frustration by filibuster. The eighteen Southerners were faced by about the same number of liberal Northern Democrats, and together they accounted for about three-fourths of the forty-nine Democratic Senators.

"In truth," wrote Senator Richard Neuberger of Oregon on the day before the debate opened, "the Democratic party now confronts the greatest crisis in modern times." It was actually greater than that of 1948, when the Dixiecrats bolted, or that of 1896 when the Goldbugs bolted, and comparable in party terms to that of 1860. "As a Northern liberal," wrote Neuberger, "I often feel I would prefer to be in a separate party in the Senate, rather than anchored in any fashion to fellow party members who are so stubbornly determined to block civil rights laws. Perhaps my Southern colleagues

. . . may occasionally harbor similar thoughts. But then I peer across the center aisle at our Republican rivals . . ." A party compromise was clearly indicated and shortly reached. It was simply that the Southerners would tentatively abandon the filibuster and as a *quid pro quo* the Northerners would accept the leadership of the moderate Texan, Senator Lyndon Johnson. The success of the compromise called for political astuteness on Johnson's part amounting to genius, the genius of a Henry Clay. The Senator, it proved, had what it took.

When the Senate belatedly entered the picture, the Second Reconstruction had already reached an advanced phase. In Negro voting, the subject most stressed by the administration bill before the Senate, there had already been tremendous expansion. In 1940, before the New Reconstruction got under way, there were some 140,000 registered Negro voters in the whole South—only 10,000 more than were registered in the single state of Louisiana in 1896, before disfranchisement. By the summer of 1956, however, there had been a nine-fold increase by Negro registrants, who then numbered about 1,238,000. This represented only 25 per cent of the potential Negro voters as compared with the registration of 52.5 per cent of the potential white voters, but it spelled substantial progress. Some striking gains had been made toward integration in colleges, public schools, public and private employment, and many other fields. But by 1957 the expected Southern reaction against the New Reconstruction was in full swing and an aggressive program to halt its progress and reverse the tide was growing in popularity. In some Lower South counties Negro voters were purged wholesale from the lists. Violence was less common in this movement than in its prototype led by the Ku Klux Klan of the 1860's, but there was some violence along with other types of intimidation. Race relations deteriorated. Both sides resorted to boycott. Legislatures passed resolutions condemning and defying the Supreme Court and passed scores of laws designed to delay,

confuse, or block desegregation. Seven states refused to make any concessions whatever to public school integration and other states ran into grave trouble with mere token compliance. Public officials boasted of defiance. Old lines of sympathy between North and South began to snap under the strain and people of both sides found it harder and harder to believe in each other's fundamental sincerity and good intentions. South frankly suspected North of playing cynical politics, and North suspected South of worse.

It was against that background that the Great Debate was conducted and in which Senator Johnson strove to bring compromise out of incorrigibility and reason out of passion.

II

THE Southerners launched their attack with disavowals of filibuster and promises to argue their case "on its merits." Abstaining from irrelevancies and emotionalism for the most part, they advanced a legal argument packed with abstruse points and constitutional history. But their audience was full of lawyers with a passion for constitutional lore and they captured attention. They pointed out that the Attorney General had represented the bill as a moderate measure designed to protect the right to vote, that the President in press interviews had described it in the same way, that the press had echoed this characterization and the public accepted it in those terms. And yet, declared Senator Richard Russell of Georgia, chief of the Southern clan and dean of the Senate, "The heart of this bill is found in Part III." The talk of voting rights was "a smoke screen to obscure the unlimited grant of powers to the Attorney General of the United States to govern by injunction and Federal bayonet."

There was already stiff opposition expressed to powers given the Attorney General by the bill for the protection of voting rights. It empowered him, on his own motion and independent of the wishes of the aggrieved party, to act as plaintiff in any

instance where he suspected interference or intention of interference with voting, and to apply to Federal courts for injunction against the persons so charged. If the judge then decided that the injunction had been disobeyed he could cite the offender for contempt, try him without jury, and send him to prison.

Discretionary powers of such scope in the hands of a "politically-minded" appointed official were intolerable enough when confined to voting rights. But Part III extended these powers to cover the whole range of unspecified civil rights. It invoked an old statute by number—section 1985, title 42, of the United States Code—which contained a subsection authorizing the Attorney General to bring suit against anyone conspiring or about to conspire to deprive a person of equal protection of the law under the Fourteenth Amendment. This language embraced hundreds of different types of cases—Brownell admitted he did not know how many. But one type of peculiar significance it surely did embrace, the type involving equal protection against segregation in schools and other institutions specified in recent decisions of the Supreme Court. Moreover, the administration bill made no mention of the fact that section 1985 automatically invoked section 1993—this latter section empowered the President or Attorney General to use the armed forces "to aid in the execution of judicial process." The unmentioned section applied only to Part III, not Part IV of the bill, and could therefore be invoked in school integration cases but not in order to protect the right of suffrage.

THE indirection and ambiguity of the bill were employed with dramatic effect by Russell, a subtle dramatist in his own right, to support the dubious charge of "subtle cunning" and disingenuous subterfuge in the drafting of the bill. But more dramatic still was the effect of his pounding emphasis upon the origins of section 1985 and 1993, the fact that they derived from laws adopted in 1866 and 1871, that they were there-

fore "Reconstruction" laws. There were other existing statutes that might have been invoked. The date of origin was of no relevance legally, but of tremendous relevance dramatically. "Senators," demanded Olin Johnston of South Carolina, "do you want to be responsible for a second reconstruction era or a second pillaging of the South?" Russell knew that of all the historical legends fixed in the public imagination, the "horrors" of the "Tragic Era" are the most vivid. That the legend was colored by three generations of Southern nightmares and race phobias did not matter. Congressional debates are no place for historical criticism. Russell was perfectly sure of his ground when he declared, "There are millions of people in this country outside the South who would not approve of another Reconstruction at bayonet point of a peaceful and patriotic South."

A few more rounds of cannister and grape of this sort and there was a visible wavering in the advancing hosts of the civil rights majority all down the line. Some dropped their arms and fled. Whole regiments sought cover. The *New York Times* called for dropping everything but the right to vote, and the Northern press took up the cry. Southern Senators were soon reading more Northern than Southern editorials into the *Record* to support their case. President Eisenhower said plaintively, "What I was seeking was legislation to prevent illegal obstruction of the right to vote," and gave the signal for general retreat. Senators Douglas and Neuberger complained that "whenever we rise to defend the administration, the rug is pulled out from under our feet by the administration. . . . It is a very embarrassing situation, Mr. President." Senator Hubert Humphrey of Minnesota, also a supporter of Part III, said, "I do not like to have the American people reminded, in however well meaning a way, of the dark and sad days of Reconstruction. It is a bad chapter." He joined with Republican leader Knowland in sponsoring a bill to repeal the offending Reconstruction law. And the United States Senate

voted 90 to 0 to exorcise forever the ghost of Thaddeus Stevens.

III

BUT the ghost would not down. For after discounting the "horrors," the nightmares, and the phobias of the Tragic Era legend, a basic question was still left unresolved: to what degree would the Second Reconstruction approximate the methods of the First? Part III raised that question in an unavoidable way. Whatever the justification or lack of it, the First Reconstruction had substituted force for persuasion, central for local government and the will of the radicals for the way of compromise. Was this to become belatedly the prototype of the new experiment? Or was the Supreme Court's way to prevail? In the absence of guidance and action from the legislative branch, the judiciary had already formulated a policy for the Second Reconstruction. It was a policy of gradualism, local initiative, piecemeal progress, "deliberate speed." It was making little progress in some areas; it was defied with impunity; and it might fail. It might, agreed its proponents, but it was certain that the other way *had* failed in the past.

United over ends, liberal Senators were badly divided over the question of means raised by Part III. In general, those from the big industrial states of the North and East gave the measure uncompromising support. Senator Clark was for extending it to protect every civil right now existing or to exist, including "the right to attend an integrated school, the right to sit where one pleases on a bus, the right to go into any hotel or recreation area or place of amusement, regardless of one's skin or color or race." In the center, a group of Senators mainly from the West and mountain states formed behind Senator Joseph O'Mahoney of Wyoming, who favored "following the temperate caution of the Supreme Court in the desegregation decision" and advancing the right to vote "with all deliberate speed." On the right sat the uncompromising Southerners, the liberals among them silently im-

pervious to their friend Humphrey's appeal: "They are senators who literally bleed for the people, yet for some reason they feel they dare not bleed for the people on this issue. . . . Some of the greatest liberals in this body are from the South. They are my kind of people. I admire them. If they will permit me I should like to help them." But they bled not.

Moving between the incorrigible right and the immovable left, Senator Johnson worked mainly in the shifting center to shape and mold an "accommodation," a workable compromise to replace a futile stalemate. The art of compromise is rarely appreciated fully by men of principle. Accounts of Lyndon Johnson's tireless negotiations have been sprinkled with knowing references to oil and natural gas, cynicism about public power bills, and foreign aid appropriations. No historian who has explored the inner workings of a major Congressional bargain along sectional lines can fail to be impressed by the potentialities that the Senate legislative calendar offered in the closing weeks of the session. The Hell's Canyon bill with its earnest Western advocates and the Southerners sympathetic to it, the desperate administration pleas for foreign aid money and the shrewd bargainers from the cotton kingdom and the coal provinces, are but two suggestive instances. The history of every major sectional adjustment over Negro rights since 1866 (including the forgotten one of 1890 over Henry Cabot Lodge's "force bill") has been curiously studded with under-the-table bargains on tariff, monetary, and railroad bills. But evidence of such negotiations is hard to establish, even by historians with access to private archives and years of research at their disposal.

On the whole one is struck by the comparative rarity of cynicism in the millions of words that make up the Senate debate. Perhaps Senator Everett Dirksen was not very convincing in his role as abolitionist from Illinois and the relevance of his references to Nero and Caligula were not readily apparent. Undoubtedly, too, a few Southern-

ers did some hard breathing over Magna Charta, the Star Chamber, and the tyranny of the late King George III. It is likely that among the inestimable contributions of Senator Johnson was his success in persuading some of the Confederate fire-eaters to abandon for the while such efforts as that of Senator Harry Byrd of Virginia on "the modern Thaddeus Stevens, now cloaked in the robes of Chief Justice." He could not prevent occasional embroilment of fellow Democrats in the ante-bellum game of mote and beam, and the horrors of race war in Chicago and Detroit were duly compared with the Polish peace in Georgia and Alabama.

Apart from these digressions the debate had a dignity, a vigor, and relevance that surprised hardened veterans of the press gallery. Participants revealed care in their homework and learning beyond the ordinary. Opponents actually listened to each other. The courteous defeatism of Russell was matched by the restraint of the Knowland-Douglas majority coalition. And the presiding genius from Texas, underneath a bland exterior, revealed a fierce pride in the Institution and a determination to recapture some of the prestige the Senate wantonly squandered in the McCarthy era. Members on both sides of the aisle responded to his pride and zeal. The Institution was on trial and must assume its proper role, even if tardily, as arbiter in a national crisis.

If any pattern was discernible in the maneuvers that resulted in the elimination of Part III, adoption of the jury trial amendment, and a settlement for protection of the right to vote, it was the coalition between Westerners and moderate or liberal Southerners. Liberals for the most part, civil rights men, the Westerners were apparently moved by a sincere spirit of moderation and a desire to salvage some substantial progress out of the bill. They had their special problems of public power and water rights and needed Southern votes, but no subtle cynicism is required to account for the votes of Anderson of New Mexico, O'Mahoney of Wyoming, Mansfield and Murray of

Montana, and Church of Idaho. They were Senators from sparsely settled states with only one or two or three representatives in the House. They had in common with the Southerners an appreciation of the plight of the minority and the values of unlimited debate in the Senate.

Every crisis over civil rights and race relations since the First Reconstruction has driven the South out of its normal alliance with a liberal West and into coalition with Eastern conservatives. It would be a curious outcome if the Second Reconstruction reversed the usual pattern. Mortal injury, at any rate, would seem to have been inflicted upon the traditional coalition between conservative Southerners and conservative Republicans. It will be a long time before the sight of their old conservative friends striking the pose of red-hot abolitionists is forgotten below the Potomac. On the other hand, while the old conservative coalition was collapsing, a new liberal coalition between South and West, typified by the partnership of Senate leader Johnson and party whip Mike Mansfield, was under construction. It might possibly be one of the more significant outcomes of the struggle, though it must be admitted that the immediate prospects for any sort of liberalism in the South were not too hopeful at the close of this debate.

IV

AFTER all the amendments, deletions, and compromises were finished and agreement with the House worked out, what remained to justify all the effort and the shouting? Enough at least to bring concerted demand from sixteen leading labor and civil rights organizations for passage of the amended bill and against the Republican threat to hold it over as an issue for 1958 with the prospect of an all-or-nothing fight. The bill contained enough to convince leading liberal lawyers that it represented a formidable and effective means of restoring and protecting the Negro's right to vote in the South. They deprecated the importance of the jury trial amendment and gloomy

predictions regarding its effect, and thought that in the great majority of cases civil contempt procedure would solve enforcement problems. Debate had exaggerated the possibility of defiance of court orders. In most cases legal action would go no further than the issuance of an injunction and the securing of obedience to it. Even the occasional involvement of a Southern jury might prove a healthy influence.

But was there enough in the bill to merit characterization by the *New York Times* as "incomparably the most significant domestic action of any Congress in this century"? Or enough to justify Dean Acheson's belief that as an achievement in the field of civil rights it ranks as "the greatest since the Thirteenth Amendment" and reveals "the legislative process operating at its best"? Acheson pronounced the elimination of Part III "undiluted gain," and called upon liberals to stop deprecating the whole achievement and "for once be proud of ourselves when we do the right thing."

There is indeed much that is heartening about the Civil Rights Act of 1957. At long last the laggard third branch of the national government has responded to a crisis that was sorely straining the resources and the prestige of the judiciary. A third leg has been added to the support of a platform of rights to which the nation has long been committed but has not been able adequately to guarantee. Moreover, a much needed sobriety and a new sense of responsibility have begun to inform the strategy of leadership in both the major parties, and the United States Senate has done much to redeem its dignity. Both in democratic process and democratic substance the new act registers gratifying gains.

ON THE other hand, liberal hopes for large and immediate expansion of the number of Negro voters in the South as a practical consequence of the Civil Rights Act are probably due for a disenchantment. There is undoubtedly a new spirit and a quickened interest in their rights at work among Negroes of the South. But this spirit

has mainly manifested itself in the cities, where obstacles to Negro registration and voting were fewest, and it may be assumed that the remarkable increase in the number of Negro voters that has taken place over the last decade has already absorbed the demand of a large part of the "New Negroes" for the franchise. Additional gains will have to come largely from rural Negroes, especially those of the Black Belt, where the new spirit is weakest and the proportion of those with low income and least education is greatest. Reliable studies have established beyond doubt that low-income, low-education groups, of whatever race or section, have the lowest rate of voting participation. The next million Negro voters will have to come out of a group that is notoriously the lowest in both income and education of any in the country. They will be slow in coming. It would require inspired work by able and courageous Negro leaders to awaken this group, which has never voted, into political consciousness. And such leaders are simply not available in anything like sufficient numbers.

Another dash of cold water is required to sober liberal expectations. This concerns the expectations of what the Southern Negroes will do with their newly gained votes if and when they get and use them. Northern Negro leaders and their liberal friends cherish hopes of a revival of the New Deal coalition of Negro, labor, and liberal whites in the South and expect an enlarged Negro vote to strengthen the coalition. It may work out that way in certain localities. But on the whole there is little evidence to support this hope and much to support fear of the very opposite effect.

Only three times has the Negro attempted political alliance with Southern whites on a basis of class interest—once briefly during the First Reconstruction, once with the Populists, and once with the New Deal. Each time the alliance was on economic issues and coincided more or less with depression. The first two coalitions were broken up mainly by agitation of the race issue. The New Deal coalition, already weakened by the

subsidence of economic issues and the spread of prosperity, would seem destined for the same fate. Every increase of Negro militancy and Northern pressure for civil rights has furthered the alienation of Southern labor from the Negro, weakened the position of white liberals in the Democratic party, and enhanced race baiting as a political asset within the South. Reacting strongly to these developments, the Southern Negro vote swung sharply to the Republican candidate in 1956. The new Negro of the South therefore found himself voting with two white groups: one group farthest removed from him on the economic scale, and another group farthest removed from him on the race issue. These two white groups were those of the better incomes in the middle class and those of the State Rights faction. The two white groups, like the Negro, were voting in protest for quite different reasons—the whites against Northern and the Negro against Southern leadership of the Democratic party. The new coalition offered little that was hopeful either to the Negro or to the liberal cause.

V

LOOKING beyond party politics and racial advantage for the larger consequences of the new Civil Rights Act, some writers have seen in it one of the great national settlements of our history, a final accommodation of Northern and Southern views, a cure for an ancient wound. This view would have it that a national understanding had been reached about the limits of Federal power and intervention in the problem of civil rights. As Walter Lippmann phrased this theory, "The corollary of this principle that the right to vote is the paramount civil right is that the other civil rights are not to be enforced by the executive power of the Federal Government. They are to be

brought into being by persuasion, experiment, negotiation, and by judicial process."

It is true that some of the classic settlements of our history have come out of such debates as the recent one. And it is also true that the full meaning of them has not always been immediately apparent. But had the accommodation that made possible the Civil Rights Act been grounded on an understanding of the scope and finality suggested, there would have been no secret about it. The most that can be claimed for the compromise is that the principle of intervention for the protection of voting rights and the corollary of restraint with respect to other civil rights are now the official policy of the Second Reconstruction. There is at least an opportunity to see if the policy can be made to work. But if it cannot, the record discloses no assurance that the radical alternatives originally proposed have been forever forsworn.

The compromise involved both a positive and a negative decision. Contrary to the belief of the makers, it is probably the latter that is of the greater importance. The framers of the Civil Rights Act of 1875 were far more positive. They thrust upon the shoulders of the Federal judiciary the whole burden of making the freedmen equal and making the whites accept the status revolution they decreed. They did this at the height of Southern reaction, when the futility of force and the bankruptcy of their policy were already apparent. The act was a fitting memorial to Senator Charles Sumner and his philosophy, as it was intended to be. But the Supreme Court shrugged off the burden and the nullified act remained a monument to the frustrated hopes of the First Reconstruction. The Civil Rights Act of 1957 could in time acquire a different significance in the history of the Second Reconstruction.